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No. 988

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

STATE OF ALABAMA, AND
WILLIAM C, HOLMAN, Warden
Kilby Prison, Montgomery, Alabama

et al.,

PETITIONERS

vs.

ERNEST G. BLAND,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Attorney General of Alabama

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No. _____

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WILLIAM C. HOLMAN, Warden,
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vs.

ERNEST G. BLAND,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The State of Alabama and William C. Holman, as Warden of Kilby Prison, Montgomery, Alabama, et al., by and through the Attorney General of the State of Alabama, Richmond M. Flowers, petition for a writ of certiorari to review the order, judgment, and decision of the United States Court of Appeals for the Fifth Circuit, entered in the above-captioned case on December 27, 1965, rehearing denied and stay of the mandate granted on January 18, 1966.

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Alabama, denying habeas corpus, is unreported, but is dated July 1, 1965, and is printed in Appendix A hereto, infra, pp. 12–16.

The United States District Court then granted a certificate of probable cause, dated July 19, 1965, and is printed in Appendix B hereto, infra, pp. 17–18.

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported to date, but is printed in Appendix C hereto, infra, pp. 18–37.

The order and judgment of the United States Court of Appeals for the Fifth Circuit denying rehearing and granting a stay is printed as Appendix D hereto, infra, pp. 37.

The judgment and opinion of the Court of Appeals of Alabama, which affirmed the case on original direct appeal, is reported as *Bland v. State*, 42 Ala. App. 392, 166 So. 2d 728, cert. den., 277 Ala. 4, 166 So. 2d 735.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 27, 1965, and application for rehearing denied on January 18, 1966; however a petition for stay of the mandate of the United States Court of Appeals for the Fifth Circuit was granted on January 18, 1966.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

I

Whether, under the due process clause of the Fourteenth Amendment of the United States Constitution, and under all the circumstances of the case at bar, required the trial court to make an affirmative offer of counsel before hearing the motion for new trial, where as here, the respondent had been represented by experienced, court appointed counsel who had successfully obtained a new trial by having the Circuit Court of Jefferson County, Alabama, grant his coram nobis petition, the same counsel representing the respondent throughout arraignment and at his second trial, and also on appeal to the Court of Appeals of Alabama, the respondent having filed his own motion for new trial; see *Bland v. State*, 42 Ala. App. 392, 166 So. 2d 728, cert. den., 277 Ala. 4, 166 So. 2d 735, and *Rogers v. United States*, 325 Fed. 2d 485.

II

Did the United States Court of Appeals for the Fifth Circuit abuse its discretion in reversing the United States District Court for the Middle District of Alabama, which had determined that there was an intelligent waiver of counsel by the respondent, prior to hearing the motion for new trial, under all the facts and circumstances in the case at bar? See Appendix A hereto attached and made a part hereof.

III

Did the United States Court of Appeals for the Fifth Circuit err in reversing the cause for "further hearing on motion for new trial" when the Court of Appeals of Alabama, in the case at bar, expressly determined that a motion for new trial is "an interim step" which is not a condition precedent to taking an original direct appeal, and that the

respondent was not prejudiced by the absence of counsel on hearing the motion for new trial? See *Bland v. State*, 42 Ala. App. 392, 166 So. 2d 728, cert. den., 277 Ala. 4, 166 So. 2d 735.

IV

Is not a motion for new trial a "post conviction remedy" which does not absolutely require the affirmative appointment of counsel such as is required by this Honorable Court's opinion in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799?

V

Has not the United States Court of Appeals for the Fifth Circuit, in the case at bar, carried the standard of intelligent waiver of counsel beyond that set by this Honorable Court in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461; *Von Moltke v. Gillies*, 332 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309, and related cases? See also *Root v. Cunningham*, 344 Fed. 2d 1, and *Arellanes v. United States*, 302 Fed. 2d 603.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment, United States Constitution.

STATEMENT

The respondent, Ernest George Bland, alias Trigger–Phil, was originally convicted in the Circuit Court of Jefferson County, Alabama, on January 17, 1961, for the offense of armed robbery and sentenced to twenty–two (22) years imprisonment. The respondent attempted to perfect his own appeal to the Supreme Court of Alabama where same was dismissed on May 21, 1961, as being filed late in that Hon–

orable Court, *Bland v. State*, 272 Ala. 215, 130 So. 2d 385. On April 10, 1962, the respondent filed a petition for leave to file a petition for writ of error coram nobis in the Supreme Court of Alabama and same was dismissed, the Supreme Court of Alabama holding that a petition for leave is not necessary where the court did not take jurisdiction of an original direct appeal, *Ex parte Bland*, 273 Ala. 449, 142 So. 2d 872.

On May 3, 1962, the respondent did file a petition for writ of error coram nobis in the Circuit Court of Jefferson County, Alabama, and that Honorable Court did appoint the Honorable William B. McCollough, Jr., to represent the respondent and set cause for hearing for Wednesday, July 25, 1962. Following a full hearing, the cause was taken under advisement and in an order and opinion dated August 9, 1962, granted the petition for writ of error coram nobis and restored the case to the trial docket for trial. (See Exhibit "A" to the return as filed in the United States District Court, R.pp. 28–35, the principal basis for granting the coram nobis petition was that the respondent was not allowed to present the testimony of certain witnesses in Texas who could have assisted him with his alibi at the time of the original trial.) In the opinion of the trial court, the fact that these witnesses were available to offer such testimony and this matter not made known to the court at the time of the original trial would have been good grounds for a continuance and the trial court granted the petition for coram nobis. The evidence of these witnesses was presented to the trial court at the respondent's second trial which is found on Record Pages 121 through 141 of Exhibit "B", to return in the United States District Court, being the complete original trial transcript of the respondent's second trial. R.p. 164–184.

The Honorable William B. McCollough, Jr., was reappointed to represent the respondent at the new trial, which trial was held on January 7, 1963, and the testimony of the witnesses in Texas was presented through depositions paid for by the State of Alabama pursuant to Title 15, Sections 297 – 301, Code of Alabama, as recompiled 1958.

At the trial of the cause the respondent was found guilty of armed robbery of the Woodlawn Hill Grocery Store having taken some $2,550.00 from the manager, one Tom W. Woods, and sentenced to twenty (20) years imprisonment as punishment for his crime. See Exhibit "B", Record Pages 1 through 4.

The respondent next filed his own motion for new trial and the same heard in open court by the trial court and the testimony and evidence given in support of the motion is to be found in Exhibit "B", which commences on Record Page 163 and runs through Record Page 172. The motion for new trial was denied.

The respondent then requested a complete transcript of the trial proceedings which was granted, and then the respondent requested the appointment of counsel to assist him on appeal to the Appellate Courts of the State of Alabama, and the Honorable William B. McCollough, Jr., was then appointed to represent Mr. Bland on appeal, and did so. Mr. McCollough first filed a petition in the Court of Appeals of Alabama to reduce appeal bond, and appeared in the Court of Appeals and the same was granted, reducing appeal bond from $50,000.00 to $25,000.00. In addition, Mr. McCollough filed an eighty-eight (88) page, legal size, brief raising numerous alleged errors, appeared personally, and argued the appeal, and in an opinion by the Court of Appeals of Alabama, that Honorable Court did affirm the cause, being

reported as *Bland v. State*, 42 Ala. App. 392, 166 So. 2d 728, cert. den., 277 Ala. 4, 166 So. 2d 735.

The respondent next filed a petition for leave to file a petition for writ of error coram nobis in the Court of Appeals of Alabama under date of December 7, 1964, and this was stricken by the Court of Appeals on January 26, 1965, without opinion, as the petition for leave raised no matters not previously considered on original direct appeal. See Exhibit "E" of the return as filed in the United States District Court, R.p. 232.

The respondent did file a petition for writ of habeas corpus in the United States District Court on February 19, 1965, and the petitioners, William C. Holman, warden, et al., did file their return under date of March 19, 1965, and the respondent did file his traverse in the United States District Court on March 24, 1965.

The United States District Court did appoint the Honorable John R. Matthews, Jr., of the law firm of Ball & Ball, Montgomery, Alabama, to represent the respondent in the District Court, and Mr. Matthews did file a most able brief under date of April 1, 1965, in support of the respondent's position in the District Court, and in addition, a stipulation was filed in the District Court setting forth those matters which would have been testified to on oral hearing of the cause. See R.pp. 250 – 253, and Exhibits, R.pp. 254 – 267. In an order and opinion dated July 1, 1965, the United States District Court did deny the petition for writ of habeas corpus, and further on July 19, 1965, did grant a certificate of probable cause allowing the respondent to appeal to the United States Court of Appeals for the Fifth Circuit.

The United States Court of Appeals for the Fifth Circuit did enter its opinion and judgment reversing the cause on

December 27, 1965. See Appendix C. The United States Court of Appeals for the Fifth Circuit did on January 18, 1966, deny rehearing, but did grant a stay of the mandate of that Honorable Court in order that this petition for writ of certiorari might be presented to this Honorable Court.

REASONS FOR GRANTING THE WRIT

1. When considering the entire record in the case at bar, the petitioners most respectfully submit, that the United States District Court for the Middle District of Alabama, was *eminently correct* in determining that there was here an intelligent waiver of counsel by the respondent on hearing his motion for new trial, and further as pointed out by the Court of Appeals of Alabama, this motion for new trial was but "an interim step," and not a condition precedent to taking an original direct appeal. In light of these determinations, *by all prior courts*, the reversal of the case at bar by the United States Court of Appeals for the Fifth Circuit is submitted to be error.

2. It is further most respectfully submitted, that the opinion of the United States Court of Appeals for the Fifth Circuit, see Appendix C, carries the standard of intelligent waiver of counsel beyond that of basic fairness and reasonableness, as set forth in the opinions of this Honorable Court in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461; *Von Moltke v. Gillies*, 332 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309; and related cases. It is further most respectfully submitted, that the opinion of the United States Court of Appeals for the Fifth Circuit, in the case at bar, would demand near perfection in the trial of criminal cases, with reference to the issue of appointment of counsel. This would clearly carry due process beyond a standard of a fair and impartial trial. See *Root v. Cunningham*, 344 Fed. 2d 1, and *Arellanes v. United States*, 302 Fed. 2d 603.

3. When reading the entire record in the case at bar, and the vast, past, criminal record of the respondent, which commences in the year 1938 and runs through numerous convictions in both State and Federal Courts in the 1940's and 1950's, and which terminates with the present case, this makes clear that the respondent was fully aware of his constitutional rights to counsel. This Honorable Court's attention is most respectfully called to the stipulation, R.pp. 254–267, in the case at bar, where, it is most respectfully submitted, it affirmatively reflects that the respondent was *attempting to trap the trial court* over the issue of appointment of counsel, which is a factor not dealt with or taken into account by the United States Court of Appeals for the Fifth Circuit. The respondent knew enough to immediately request counsel by letter, for purposes of an appeal, as soon as his motion for new trial was overruled. R.p. 260.

4. A further basis for granting the writ, it is most respectfully submitted, is to clarify the opinion of this Honorable Court in *Hamilton v. Alabama,* 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed. 2d 114, which made the requirement of appointment of counsel, in capital cases, prior to arraignment in Alabama, a constitutional necessity. Because of the reasons explained by this Honorable Court in the Hamilton Case, it does not follow that a motion for new trial is also a "critical stage" requiring an offer of appointment of counsel on the part of the trial court. To hold otherwise is to demand near perfection of the trial judges. Further, when reading the entire record, one cannot help but be impressed by the efforts of the Circuit Judge, the Honorable Wallace C. Gibson, to go out of his way in behalf of the respondent to secure to him every possible right.

5. It is most respectfully submitted, that this Honorable Court's opinion in *Hamilton v. Alabama,* supra, and related

cases, does not demand perfection at every point in a criminal trial of indigent parties, or same would continue ad infinitum. Further, all of the matters presented by Bland on motion for new trial, were also presented by his counsel, Mr. McCollough, on original direct appeal, in addition to a number of other matters, and reviewed by the Appellate Courts of Alabama *on the merits*. Indeed there was nothing that counsel, at the motion for new trial, could have done that was not subsequently done by Mr. McCollough. Therefore, the absence of counsel on hearing this motion was error without injury.

In brief, counsel on hearing the motion for new trial, should not become, in the words of the late Gertrude Stein, "a rose is a rose is a rose", but rather "a rose by another name", namely—harmless error.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

RICHMOND M. FLOWERS
Attorney General of the
State of Alabama

JOHN C. TYSON, III
Assistant Attorney General
of Alabama

CERTIFICATE

This is to certify that I, John C. Tyson, III, one of the attorneys for the petitioners, and a member of the Bar of

the Supreme Court of the United States, prior to filing, served two copies of the foregoing Petition for Writ of Certiorari of the Petitioners, on Ernest G. Bland, respondent, Route 3, Box 115, Kilby Prison, Montgomery, Alabama, and served two copies on the Honorable James R. Matthews, Jr., Attorney at Law, BALL & BALL, First National Bank Building, Montgomery, Alabama, by mailing them in a properly addressed envelope, with first class postage prepaid, in the United States mail, on the 3rd day of February, 1966.

JOHN C. TYSON, III
Assistant Attorney General
of the State of Alabama

State Capitol
Montgomery, Alabama 36104

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ERNEST G. BLAND,)
Petitioner,)
vs.) CIVIL ACTION NO. 2178–N
STATE OF ALABAMA,)
Respondent.)

O R D E R

The petitioner Bland, by order of this Court made and entered in this cause on February 24, 1965, filed in forma pauperis his application for a writ of habeas corpus. On March 10, 1965, upon the application of Bland filed on March 9, 1965, this Court appointed counsel to represent Bland to this cause. For good and sufficient reasons, counsel appointed on March 10, 1965, was relieved on March 23, 1965, and the Honorable John R. Matthews, Jr., was appointed to represent Bland. Attorney Matthews has, since said appointment, represented Bland in this proceeding.

Bland alleges that he is presently incarcerated by the State of Alabama at Kilby Prison, Montgomery, Alabama, in violation of his constitutional rights. His basic complaint is that his constitutional rights were violated by the State of Alabama, acting through the Circuit Court of Jefferson County, Alabama, in January, 1963, at which time he was prosecuted and convicted in said court after a trial by a jury for the offense of robbery; upon his conviction, and on the 8th day of January, 1963, Bland was sentenced to the State penitentiary for a term of twenty years. He is presently serving his sentence.

As required by the order of this Court, William C. Holman, Warden, Kilby Prison, Montgomery, Alabama, appeared in this cause through his attorney, the Attorney General for the State of Alabama, by filing a return and answer to Bland's petition. This return and answer was filed on March 20, 1965; as a part of the return and answer of the respondent Holman, a motion to dismiss the petition for a writ of habeas corpus was presented. This Court by order made and entered herein on April 5, 1965, determined and held that the matter was not to be disposed of on a motion to dismiss, but that a plenary hearing was to be conducted. A pretrial hearing was, accordingly, scheduled and was conducted on Thursday, May 6, 1965. Subsequent to the pretrial hearing, and on May 6, 1965, counsel for the petitioner and for the respondent filed a written stipulation with this Court. The effect of the stipulation was to eliminate any plenary hearing and to submit this cause upon the pleadings, upon the exhibits, including the transcript of the trial, and the several matters agreed to by the parties in said written stipulation.

Upon this submission, this Court specifically finds that Bland has exhausted the remedies available to him in the courts of the State of Alabama as he is required to do by Title 28, § 2254, United States Code. The two remaining matters for decision by this Court are:

(1) Whether the failure on the part of the trial court, in the absence of any request by Bland or his counsel, to have the concluding arguments recorded and transcribed violated his constitutional rights within the meaning of *Draper v. Washington*, 372 U.S. 487; and

(2) Whether the failure of the trial court to provide counsel for Bland's application for a new trial (this issue includes whether there was an intelligent and understanding waiver of counsel on Bland's part) deprived Bland of his constitutional rights.

Bland was originally convicted in 1961 in the Circuit Court of Jefferson County, Alabama, for the offense of armed robbery, and was sentenced to 22 years' imprisonment. In May, 1962, he filed a petition for a writ of error coram nobis in the Circuit Court of Jefferson County, Alabama; that court appointed counsel to represent him; a hearing was conducted on said petition in July, 1962, and on August 9, 1962, the State circuit court granted his petition for a writ of error coram nobis and ordered that the judgment and conviction of January, 1961, be set aside. The matter was again set for trial, and the Honorable William B. McCollough, Jr., was appointed to represent Bland in the State court. It was agreed that Attorney McCollough not only adequately and competently represented Bland, but "did an excellent job." At the conclusion of the second trial, the oral arguments of counsel were not recorded. No request was made by Mr. McCollough to record the oral arguments because Bland had no money to pay the court reporter, the practice in Jefferson County being that the court reporters did not record oral arguments unless arrangements were made in advance for their payment. No request was made of either the court reporter or the trial judge to have the oral arguments transcribed. The stipulation reflects that if such a request had been made, the court would have made arrangements to have the arguments recorded and transcribed without charge since Bland was proceeding in the State court as an indigent. Bland complains that because of certain prejudicial arguments, the failure on the part of the trial judge to have the court reporter record and transcribe the arguments deprived him of a fair and complete record for appellate review. As to this point, this Court finds that there was an intelligent and effective waiver by Bland and his counsel of Bland's right to have the oral arguments recorded and transcribed. The burden should not and cannot be placed upon the trial judge to take the initiative and call such matters to the attention of the competent counsel for de-

fendants. Furthermore, this Court finds from the record and the pleadings in this case that the record was of sufficient completeness within the meaning of *Draper v. Washington*, supra, so that there was no prejudice to Bland by reason of the failure to record and transcribe the oral arguments.

In connection with the second point, after Bland's trial and sentence Attorney McCollough's appointment by the circuit court expired. There was no counsel appointed for the purpose of filing and presenting a motion for a new trial to the trial court. This Court specifically finds that no request for such assistance was made by Bland of the trial court. To the contrary, the correspondence between Bland and the trial court, and the proceedings which have been transcribed and presented to this Court in connection with Bland's motion for a new trial, reflect that Bland was intentionally representing himself in connection with his post-conviction proceedings. Bland continued to represent himself until his case was pending in the Court of Appeals for the State of Alabama, during which time he requested the Court of Appeals to appoint counsel for him, and, again, Attorney McCollough was designated to act as Bland's counsel. In this connection, this Court finds that there was an intelligent and understanding waiver of counsel on Bland's part insofar as the proceedings subsequent to his conviction were concerned and up until the Court of Appeals appointed counsel. The principles of *Carnley v. Cochran*, 369 U.S. 506, are not applicable in this case since there was an intelligent waiver of counsel on Bland's part. Furthermore, the records upon this submission reflect that Bland was not prejudiced in any way by not having counsel in connection with his motion for a new trial. It is stipulated by the parties that Attorney McCollough adequately and fairly represented Bland before the Court of Appeals for the State of Alabama from the time of his appointment in April, 1963.

This Court concludes, therefore, that there was no violation of Bland's constitutional rights in connection with his prosecution and sentence in the Circuit Court of Jefferson County, Alabama, which prosecution and sentence resulted in his present incarceration. The records, as now presented, reflect that as to every aspect of the proceeding petitioner Bland received substantial justice.

In consideration of the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that the petition for a writ of habeas corpus filed herein in forma pauperis by leave of this Court on February 24, 1965, be and the same is hereby denied.

It is further ORDERED that petitioner Bland's petition for a writ of habeas corpus be and the same is hereby dismissed.

It is further ORDERED that the Clerk of this Court forward copies of this order to the Honorable Richmond M. Flowers, Attorney General, State of Alabama, Montgomery, Alabama; to the Honorable John R. Matthews, Jr., Montgomery, Alabama, the court-appointed attorney for petitioner Bland, and to the petitioner, Ernest G. Bland, in care of the Warden of Kilby Prison, Montgomery, Alabama.

Done, this the 1st day of July, 1965.

FRANK M. JOHNSON, JR.

United States District Judge

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ERNEST G. BLAND, Petitioner,	)	
vs.	)	CIVIL ACTION NO. 2178–N
STATE OF ALABAMA, Respondent.	)	

ORDER

This cause is now submitted on the application for a certificate of probable cause and motion for leave to appeal in forma pauperis filed herein on July 15, 1965, by the petitioner, Ernest G. Bland, wherein he seeks to appeal to the United States Court of Appeals for the Fifth Circuit from the order of this Court made and entered herein on July 1, 1965, denying his petition for a writ of habeas corpus.

Upon consideration of said application for a certificate of probable cause, this Court is of the opinion that said application should be granted. Title 28, § 2253, United States Code; *Coppedge v. United States*, 369 U.S. 438. The application for leave to appeal in forma pauperis should also be granted.

In consideration of the foregoing and for good cause, it is, therefore, the ORDER, JUDGMENT and DECREE of this Court that the application of Ernest G. Bland for a certificate of probable cause, authorizing the said Bland, pursuant to the provisions of § 2253, Title 28 of the United States Code, to appeal from the order of this Court made and entered herein on July 1, 1965, be and the same is hereby ISSUED and GRANTED. It is further ORDERED that the motion of

Bland for leave to appeal in forma pauperis be and the same is hereby granted.

Done, this the 19th day of July, 1965.

FRANK M. JOHNSON, JR.
United States District Judge

APPENDIX "C"

In The

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 22872

ERNEST G. BLAND,

Appellant,

versus

STATE OF ALABAMA,

Appellee.

Appeal from the United States District Court for the Middle District of Alabama

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(December 27, 1965.)

Before MARIS,* RIVES and BELL, Circuit Judges.

RIVES, Circuit Judge: This appeal is from a judgment, entered after an evidentiary hearing, which denied habeas corpus to a state prisoner. The appellant Bland was con-

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* O the Third Circuit, sitting by designation.

victed of armed robbery in the Circuit Court of Jefferson County, Alabama. Upon his trial and on appeal he was represented by able court-appointed counsel at all stages, except upon motion for new trial when he represented himself without counsel. The district court found that he was not prejudiced in any way by not having counsel on his motion for new trial, and that he had made an intelligent and understanding waiver of counsel on that motion. Decision here turns on the correctness vel non of those factual holdings. For a thorough review, we find it necessary, at the risk of an overly-lengthy opinion, to make a full statement of the facts.

The manager of a Hill's Supermarket in Woodlawn, Birmingham, Alabama, was robbed at pistol point about 6:00 o'clock in the evening of November 22, 1960, two days before Thanksgiving. The robber took about $2,550.00.

On November 30, some eight days after the robbery, Bland was arrested in Houston, Texas. He was originally convicted on January 17, 1961 and was then sentenced to twenty-two years imprisonment. His appeal from that judgment of conviction was dismissed as having been filed too late. *Bland v. State*, Ala. 1961, 130 So.2d 385. The Supreme Court of Alabama dismissed his petition for leave to file a petition for writ of error coram nobis,[1] holding such leave not necessary where the State Supreme Court did not take jurisdiction of the original appeal from the judgment of conviction. *Ex parte* Bland, Ala. 1962, 142 So.2d 872. Upon a petition filed directly in the trial court, the writ of error coram nobis was granted and the judgment of conviction vacated.[2]

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[1] Coram nobis is the usual post-conviction remedy in Alabama, and has been developed by the State courts into an efficient and adequate review. See Wiman v. Argo, 5 Cir. 1962, 308 F.2d 674, 677.

[2] The judge granted the writ largely because Bland had not had the opportunity to present the testimony of certain alibi witnesses

William B. McCollough, Jr., Esq., had been appointed by the trial court to represent Bland on his petition for writ of error coram nobis. Having successfully prosecuted that petition, Mr. McCollough was appointed by the court to represent Bland upon his second trial. At that trial Bland was again convicted and was then sentenced to twenty years imprisonment. Nonetheless, in his pro se pleadings in the district court, Bland refers to Mr. McCollough as a "very able counsel."

The date of Bland's second judgment of conviction and twenty-year sentence was January 8, 1963. Mr. McCollough then gave notice of appeal, but withdrew such notice pending the filing of a motion for new trial. On January 18, 1963, Bland received a letter from Mr. McCollough stating that he had withdrawn from the case. On the same day on which he received Mr. McCollough's letter of withdrawal, Bland wrote to the trial judge as follows:

"January 18, 1965
County Jail

"The Honorable Wallace Gibson
10th Circuit Court
2nd Division
Jefferson County Courthouse

"Dear Sir:

"I would appreciate it if you would have me brought before the court, so that I might straighten

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from Texas. While the court thought that ground by itself insufficient, it stated: "* * * in the exercise of its discretion in such cases to afford a fair trial, that under the totality of the circumstances, that the petition for writ of error coram nobis of the petitioner, Ernest G. Bland, should be granted."

out the matters concerning Motions for new trial and notice of appeal.

"I have just been notified by Mr. Bill McCollough, Jr. that he is not my attorney as of this date, therefore no motions have been filed.

"I would like to inform the court at this time, that as a pauper I am in need of the trial transcript in order to perfect my appeal to the Alabama Supreme Court.

"Thanking you in advance, I remain,

"Respectfully,

"cc.Retained: E.G.B.

"Ernest Geo. Bland
"County Jail."

Another letter and attached petition was received by the trial court on January 22, 1963, which read as follows:

"Received By Court on January 22, 1963

"2nd Division

Jefferson County Courthouse.

"Re: Ernest Geo. Bland
vs State of Alabama

"Dear Judge Gibson:

"I am writing you in regards to the present situation in regards to my case.

"As you know on January 8th 1963 my attorney Mr. Bill McCollough, Jr. gave notice of appeal at

the time you were sentencing me, he then withdrew such notice, and I quote Mr. McCollough's words as follows: 'I withdraw notice of appeal pending the fileing (sic) of Motions for new trial' (end quote). That same day Mr. McCollough was taken to the hospital where he spent several days, then on January 18th 1963 I received a letter from Mr. McCollough stating he had withdrawn from the case.

"Therefore Judge Gibson I am asking that I be accorded the same rights as one who was financially (sic) able to pay all the legal fees. As you can see the papers attached hereto lack a notary seal, due to the fact none is available to me, therefore I am asking that I be brought before you so that such a seal can be afixed thereto.

"Thanking you in advance, I remain.

"Respectfully,

"cc. Retained /E.G.B.

"Ernest Geo. Bland"

"Ernest George Bland

v.

"State of Alabama

"In the 10th Judicial Circuit Court, 2nd Div. Jefferson County, Alabama.

No. .....

"FILED IN OFFICE
JAN 22 1963
JULIAN SWIFT
Clerk.

"Petition For Trial Transcript

"Comes now Ernest George Bland and petitions

this Honorable Court for a copy of the trial transcript under Article 62, Special Sessions and cites Griffin v. Illinois, U.S. 76, S.Ct. 585, 351 U.S. 12, as authority for such and would most respectfully show the court the following:

"That on January 8th 1963 Petitioner was adjudged guilty by a jury and punishment assessed at twenty years (20) in the State Penitentiary for the offense of robbery as charged in the indictment in the cause of Ernest George Bland vs State of Alabama Cause No. ..... Petitioner further states that he wishes to appeal said conviction as guarnteed (sic) by the statutes and Constitution of the State of Alabama as well as the Constitution of the United States and in order to perfect said appeal properly Petitioner is in need of said transcript.

"Petitioner further states he is innocent of the alledged (sic) charge of robbery.

"Respectfully submitted,
—"Ernest G. Bland "

On the same day, Bland, *pro se*, filed a motion for new trial, one of the grounds of which read: "(C) The trial court erred in allowing the Solicitor to refer to defendant as a person who had previously been in trouble with the police."

"THE COURT: 'C': The trial court erred in allowing the Solicitor to refer to defendant as a person who had previously been in trouble with the police.

"What does that have reference to?

"THE DEFENDANT: I believe Mr. Hawkins

stated to the jury that the large cities kept a file on professional robbers and thieves, or some such like that, and in that statement he was inferring that I was picked out from that file.

"THE COURT: I recall the argument. I recall an objection. I did not, frankly, construe it to be what you construe it as, when taken into consideration with the entire argument that was made by Mr. Hawkins."

At the conclusion of the hearing the court overruled Bland's motion for new trial, accepted his oral notice of appeal and granted his request for a transcript of the testimony without cost. On March 27, Bland moved the court "for the appointment of counsel to perfect and aid in his appeal of the case," and filed a like motion on April 17. The Court of Appeals of Alabama requested the trial court to appoint a lawyer to handle the case on appeal, and on April 23 the trial court appointed Mr. McCollough for that purpose. The judgment of conviction was affirmed on May 12, 1964 and rehearing denied on June 9, 1964, *Bland v. State, Ala.* App. 1964, 166 So.2d 728. On June 3, 1964, Mr. McCollough wrote to Bland as follows:

"As you know, I was appointed by the Court of Appeals to represent you in that court only. My decision is that I cannot use this office in the writing of another brief and the arguing of your case again in the Supreme Court if certiorari is granted without fee. I not only owe it to my partner but owe it to my clients and myself to make this decision."

Bland filed, *pro se,* a petition for certiorari to the Supreme Court of Alabama, which petition was dismissed. *Bland v.*

State, Ala. 1964, 166 So.2d 735. Bland then petitioned the Court of Appeals of Alabama for leave to file a petition for writ of error coram nobis. On January 26, 1965, that petition was stricken by the Alabama Court of Appeals.

On February 24, 1965, the district court granted Bland leave to file his petition for habeas corpus in forma pauperis, and ordered the respondent to show cause why the writ should not issue. Later the district court appointed John R. Matthews, Jr., Esq., as counsel to represent Bland, and set the cause for hearing.[3] Upon hearing in the district court, the case was submitted upon the pleadings, the transcript filed in the Court of Appeals of Alabama, and upon a stipulation entered into by the Attorney General of Alabama with Mr. Matthews as attorney for Bland. as follows:

"1. Ernest G. Bland, herein called Bland, was an indigent defendant who had no funds at the time he was tried and convicted in the Circuit Court of Jefferson County, Alabama, in January, 1963.

"2. Title 13, Section 261, Code of Alabama, 1940, does not require the transcription of oral arguments. In the Circuit Court of Jefferson County, Alabama, oral arguments are not transcribed unless arrangements are made with the court reporter or requested of the trial judge in advance of such arguments.

"3. Bland was represented in said trial by Bill McCollough, Jr., a court-appointed attorney. Mr. McCollough, if called to testify, would testify that he did not request the recordation of oral arguments because Bland had no money to pay the court reporter for doing so, and that he

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[3] Mr. Matthews, with commendable zeal and skill, has continued his representation of Bland throughout the present appeal.

understood the practice of the court reporters in the Circuit Court of Jefferson County, Alabama, to be that they would not record oral arguments unless arrangements were made in advance for their payment. Neither he nor Bland requested that the trial judge or the court reporter have the oral argument transcribed at any stage during the trial of the case. The trial judge, if called to testify, would testify that if request had been made, he would have required the court reporter to record and transcribe oral argument even in the absence of agreement to pay for same. The oral arguments were not transcribed by the reporter. The trial judge would further testify that neither Bland nor his attorney made known to the court that oral arguments were not being transcribed during the course of oral argument or at any other time during the trial proceedings.

"4. The trial judge, if called to testify, would state that he had originally appointed Mr. McCollough to represent Bland on the coram nobis proceeding wherein Bland's original conviction of twenty-two years was set aside; that he then reappointed Mr. McCollough to represent Bland for the trial of the case only, and that Mr. McCollough was present for arraignment and throughout the original trial proceedings. The trial judge would further testify that he did not reappoint Mr. McCollough or another attorney to represent Bland for the purpose of filing and presenting the motion for new trial and that Bland had not made a request for counsel at this stage of the proceedings. He would further testify that Bland had no counsel in the filing and arguing of his motion for new trial, and that Bland did not raise any point that oral arguments had not been recorded by the reporter at the time he argued and presented his motion for new trial.

"5. Bland, if called to testify, would state that he re-

quested of the trial court by letter that the court appoint an attorney to represent him on his motion for new trial, but that the trial court apparently misunderstood his request and did not appoint an attorney to represent him. (See Tr. pp. 163–164.) The trial judge would testify that he received a letter from Bland but that the letter did not request the appointment of an attorney, but dealt with notice of appeal, and request for a transcript, and that no request, either oral or written, by letter or motion, was made of him for an attorney to represent Bland in connection with the motion for new trial, dated January 22, 1963, and that he would have appointed Mr. McCollough to represent Bland had such a request been made of him. Letters beginning January 18, 1963, motions and notes are herewith attached. The trial judge would further testify that because Bland was an indigent and had filed his own motion for new trial, he required the court reporter to take down the proceedings at the motion for new trial and did allow Bland every opportunity to explain and argue each point that he desired to raise. The trial judge would further testify that Bland made no request of the trial court or the court reporter during the argument on motion for new trial that the oral argument be transcribed. The solicitor, the trial judge, and Mr. McCollough would also testify that they have examined the court file and found no letter or motion requesting the appointment of counsel to assist Bland with his motion for new trial.

"6. Bland would testify that at the time he argued his motion for new trial, the testimony had not been transcribed and that he did not realize that the oral arguments had not been recorded. Bland would further testify that if he had realized such facts, that he, as an indigent with limited education and no legal training or experience, would not have known what to do to perfect his record so that the

objections to oral argument could have been adequately presented on appeal.

"7. Mr. McCollough would testify that in his opinion the solicitor's argument which he objected to was extremely and highly objectionable and prejudicial. The trial judge and the circuit solicitor would testify that, in their opinion, the oral argument was not objectionable or prejudicial and would further testify that such argument was misconstrued by Bland and taken out of context. (See discussion between the Court and Bland on Motion for New Trial, Tr. p. 166.) The argument of the circuit solicitor and the objections made by Mr. McCollough were not included in the transcript except as above referred to.

"8. All parties, including Bland, would testify that Mr. McCollough did an excellent job in representing Bland in the trial of the case, and on appeal before the Court of Appeals. On appeal, Mr. McCollough successfully moved to have the appeal bond reduced, filed an eighty-three page legal-size brief and personally appeared and argued the appeal before the Court of Appeals. Bland filed his own motion for certiorari in the Supreme Court of Alabama and had no legal counsel at this stage of the proceedings.

"It is further stipulated that Bland has exhausted his State remedies as to all issues here presented except that he did not present the question of his not having counsel for filing the application for certiorari in the Supreme Court of Alabama, nor did he request the Supreme Court to appoint counsel at this stage."

The district court denied Bland's petition for habeas corpus on July 1, 1965, in an order which considered two questions:

"(1) Whether the failure on the part of the

trial court, in the absence of any request by Bland or his counsel, to have the concluding arguments recorded and transcribed violated his constitutional rights within the meaning of *Draper v. Washington*, 372 U.S. 487; and

"(2) Whether the failure of the trial court to provide counsel for Bland's application for a new trial (this issue includes whether there was an intelligent and understanding waiver of counsel on Bland's part) deprived Bland of his constitutional rights."

As to the first question, the district court found that:

"* * * there was an intelligent and effective waiver by Bland and his counsel of Bland's right to have the oral arguments recorded and transcribed. The burden should not and cannot be placed upon the trial judge to take the initiative and call such matters to the attention of competent counsel for defendants. Furthermore, this Court finds from the record and the pleadings in this case that the record was of sufficient completeness within the meaning of *Draper v. Washington, supra*, so that there was no prejudice to Bland by reason of the failure to record and transcribe the oral arguments."

As to the second question, the district court stated:

"In connection with the second point, after Bland's trial and sentence Attorney McCollough's appointment by the circuit court expired. There was no counsel appointed for the purpose of filing and presenting a motion for a new trial to the trial court. This Court specifically finds that no request for such assistance was made by Bland of the trial

court; to the contrary, the correspondence between Bland and the trial court, and the proceedings which have been transcribed and presented to this Court in connection with Bland's motion for a new trial, reflect that Bland was intentionally representing himself in connection with his post-conviction proceedings. Bland continued to represent himself until his case was pending in the Court of Appeals for the State of Alabama, during which time he requested the Court of Appeals to appoint counsel for him, and, again, Attorney McCollough was designated to act as Bland's counsel. In this connection, this Court finds that there was an intelligent and understanding waiver of counsel on Bland's part insofar as the proceedings subsequent to his conviction were concerned, and up until the Court of Appeals appointed counsel. The principles of *Carnley v. Cochran*, 369 U.S. 506, are not applicable in this case since there was an intelligent waiver of counsel on Bland's part. Furthermore, the records upon this submission reflect that Bland was not prejudiced in any way by not having counsel in connection with his motion for a new trial."

On appeal it is conceded there was no reversible error in the district court's ruling on what it called the "first point."[4] The contentions in this Court center around the district court's decision of the "second point."[5] Contrary to

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[4] "Since Title 13, Sec. 262, Code of Alabama, 1940, specifically exempts the court reporter from recording 'argument of counsel.' we do not contend that it was incumbent upon the trial judge to order the court reporter to transcribe the argument unless his attorney requested it." Appellant's brief, p. 9.

[5] There is an additional insistence on the failure to appoint counsel to assist Bland in the filing of his petition for certiorari to the Supreme Court of Alabama. That insistence cannot be considered

the decision of the district court, we are forced to conclude that the undisputed evidence fails to establish any intelligent and understanding waiver of counsel by Bland on his motion for new trial, and that there is no such showing of lack of prejudice as would bar him from relief.[6]

Prior to the filing of his motion for new trial, Bland's letters to the State trial judge had informed him that he had no lawyer and had asked "that I be accorded the same rights as one who was financialy (sic) able to pay all the legal fees." (*Supra*, p. 4.) He did not more specifically request the appointment of counsel to represent him on the motion for new trial. When he appeared *pro se* on that motion, the trial judge knew that Bland was urging error in allowing the prosecuting attorney to refer to him as a person who had previously been in trouble with the police. The trial judge recalled the argument and an objection thereto, but ruled against Bland because he construed the argument differently when taken into consideration with the entire argument. The trial judge also knew that, by virtue of law and custom in his court, final argument had not been recorded, and that, in the then status of the record, Bland could have no adequate review of his ruling. There is no showing that Bland also had that knowledge. The inevitable result followed in the decision of the Court of Appeals of Alabama:

> " * * * Without benefit of the entire argument, we must judge its import as set out in the motion for a new trial. The trial judge, in overruling the motion for new trial, held the following:

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because, as shown in the concluding part of the stipulation in the district court, Bland has not exhausted his state remedies as to that issue. See 28 U.S.C.A. 2254.

[6] The State court of appeals had noted that, "There is no showing in the record that appellant requested or was denied counsel to assist in his motion for new trial." 166 So.2d 732.

'I recall the argument. I recall an objection. I did not, frankly, construe it to be what you construe it as, when taken into consideration with the entire argument that was made by Mr. Hawkins.'

"The prejudicial qualities of improper remarks of a solicitor must be gauged in each case separately, with much depending on the issues, the parties and the general atmosphere of the case. Anderson v. State, 209 Ala. 36, 95 So. 171; Mitchell v. State, 18 Ala.App. 471, 93 So. 46, cert. den., Ex parte Mitchell, 208 Ala. 699, 93 So. 923; Hawkins v. State, 29 Ala. App. 221, 195 So. 762, cert. den. 239 Ala. 532, 195 So. 765. We think that the trial judge had the better opportunity to judge the prejudicial effect of the above statement, in the context in which it was made, and agree that it could be made without creating an inference so prejudicial as to require a reversal."

Bland v. State, Ala.App. 1964, 166 So.2d at 732.

Since the argument would not appear in the court reporter's transcript, the only way that it could be included in the record for review was by affidavit or other supplemental evidence on the motion for new trial.[7] Bills of exceptions in the trial of cases at law in the state circuit court having a full-time court reporter have been expressly "abolished."[8]

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[7] See Rules of Practice of Circuit and Inferior Courts 22, Vol. 3, Code of Alabama, Recompiled 1928, p. 1194; New York Life Ins. Co. v. Turner, Ala. 1923, 97 So. 687, 688; McLemore v. International Union, Ala. 1956, 88 So2d 170, 172.

[8] Code of Alabama 1940, Title 7, §827(1).

Thus, without the aid of counsel on his motion for new trial, Bland was precluded from an adequate appellate review. Under the Constitution, he was entitled to as adequate appellate review as a defendant who had money.[9]

A reading of the evidence in Bland's trial for robbery discloses that there was ample evidence, if believed by the jury, to sustain the judgment of conviction. Skillful counsel succeeded in casting some doubt upon the accuracy of his identification and in showing the possibility that another suspect may have assumed Bland's identity. The sufficiency of the evidence to sustain conviction is usually raised on motion for new trial, and cannot be raised on appeal unless a ruling of the trial court has been invoked.[10]

It is highly improbable that counsel could have persuaded either the trial court or the appellate court that the evidence did not sustain the verdict of guilt. It is not nearly so certain that an adequate appellate review might not have resulted in a reversal and new trial because of the alleged improper argument of the prosecuting attorney. Of course, in the absence of a record or of affidavits showing the argument, it cannot be known that a reversal would have resulted.

In the status of this case, however, the motion for new trial and the hearing thereof were certainly as critical stages of the proceeding as was the arraignment in *Hamilton v. Alabama*, 1961, 368 U.S. 52. Here, as in that case, the degree of the prejudice can never be known.

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[9] Griffin v. Illinois, 1956, 351 U.S. 12; Douglas v. California, 1963, 372 U.S. 353; Draper v. Washington, 1963, 372 U.S. 487.

[10] Taylor v. Alabama, Ala.App. 1941, 5 So.2d 117; Coffey v. State, Ala.App. 1943, 12 So.2d 863; Lassiter v. State, Ala. App. 1955, 83 So.2d 365; Colvin v. State, Ala.App. 1957, 102 So.2d 911; Owens v. State, Ala. App., 1958, 109 So.2d 141.

Armed robbery is a capital offense in Alabama.[11] As said in *Hamilton v. Alabama, supra,* 368 U.S. at 54–55:

> "In *Powell v. Alabama,* 287 U.S. 45, 69, the Court said that an accused in a capital case 'requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.' The guiding hand of counsel is needed at the trial 'lest the unwary concede that which only bewilderment or ignorance could justify or pay a penalty which is greater than the law of the State exacts for the offense which they in fact and in law committed.' *Tomkins v. Missouri,* 323 U.S. 485, 489."

It is true that Bland did not more specifically request counsel on his motion for new trial than is indicated by his letter. However, the trial court knew that he did not then have counsel, and was charged with knowledge of the importance of counsel at that stage of the proceeding. Under those circumstances, the rule stated in *Carnley v. Cochran,* 1962, 369 U.S. 506, 516, applies with full force:

> "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver."

The federal courts have seized upon the general words of the statute regulating proceedings in habeas corpus that, "The court shall summarily hear and determine the facts,

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[11] Code of Alabama 1940, Title 14, §15.

and dispose of the matter as law and justice require'"[12] to hold that they need not limit relief to cases where an immediate discharge of the petitioner is required, but should tailor the relief according to the requirements of law and justice in the particular case.[13] Under the holdings in those cases, the appropriate relief here, if available, would be to afford as adequate review of Bland's judgment of conviction as if he had been represented by counsel on his motion for new trial. It may be that, because of the passage of time and the absence of a stenographic transcript of the arguments, the arguments cannot now be sufficiently reproduced by evidence or affidavits, and that Bland must be accorded a third trial.

On the other hand, it may be that the Alabama state courts can, by use of coram nobis, or some other extraordinary writ, sufficiently reconstruct the arguments and afford Bland an appellate review as adequate as if he had been represented by counsel on his motion for new trial. Whether a new trial is necessary had best be left in the first instance to the State.

The district court should enter such orders as are appropriate to allow the State a reasonable time in which either to re-try Bland, or to afford him as adequate review of his judgment of conviction as if he had been represented by counsel on his motion for new trial.

REVERSED AND REMANDED.

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[12] Now the concluding sentence in 28 U.S.C.A. §2243.

[13] Mohler v. Eby, 1924, 264 U.S. 32, 45, 46; Dowd v. Cook, 1951, 340 U.S. 206, 210; Pate v. Holman, 5 Cir. 1965, 5 Cir. 1965, 341 F.2d 764, 777; Compare Lyles v. United States, 5 Cir. 1965. 346 F.2d 789, 792.

MARIS, Circuit Judge, dissenting.

I regret that I am not able to concur with the opinion and judgment of the court. However, I think that the district court was justified in finding as it did that Bland was intentionally representing himself in connection with the post conviction proceedings following his second trial and that there was an intelligent and understanding waiver of counsel on his part insofar as those proceedings were concerned.

I take into account the fact that counsel had been appointed for Bland in connection with the prosecution of his petition for a writ of error coram nobis following his first conviction and that counsel had likewise been appointed to defend him at his second trial. It is inconceivable to me, in light of this recent experience of his, that he did not know that he had a right, upon request to the court, to the appointment of counsel in these post trial proceedings. Nonetheless, in his letters to the State trial judge following his conviction which are quoted in the opinion of the court he made no request for the appointment of counsel although he expressly reported to the court the withdrawal of his previously court appointed counsel and although he asked for other assistance, including a pre-trial transcript, exemption from the payment of legal fees, and the affixing of a Notary's seal to his papers. I cannot read his asking for "the same rights as one who was financially able to pay all the legal fees" as such a request.

On this record I agree with the district court that Bland cannot now be heard to assert that he was denied the appointment of counsel. A defendant accused of crime must be afforded every constitutional right. However, the indefinite prolongation of the proceedings is not one of those rights. There comes a time when the proceedings against

a defendant accused of crime must terminate. In the case of Bland I think that time is now.

I would affirm the denial of the writ of habeas corpus by the district court.

APPENDIX "D"
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 22872

ERNEST G. BLAND,
Appellant,
versus
STATE OF ALABAMA,
Appellee.

Appeal from the United States District Court
for the Middle District of Alabama.

(Jan. 18, 1966)

ON PETITION FOR REHEARING

Before MARIS*, RIVES and BELL, Circuit Judges.
PER CURIAM:

The petition for rehearing filed by the appellee in this cause is hereby DENIED.

The motion of the appellee to stay the issuance of the mandate is granted and the mandate will be stayed for a period of thirty (30) days from this date in order to afford the appellee an opportunity to apply for certiorari to the Supreme Court of the United States.

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* Of the Third Circuit, sitting by designation.

APPENDIX "E"

(AMENDMENT XIV)

Section 1.

(Citizenship Rights Not to Be Abridged by States)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any states deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

(Apportionment of Representatives in Congress)

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty–one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty–one years of age in such state.

Section 3.

(Persons Disqualified from Holding Office)

No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

Section 4.

(What Public Debts Are Valid)

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

(Power to Enforce This Article)

The congress shall have power to enforce, by appropriate legislation, the provisions of this article.